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In the
Supreme Court of the United States

OCTOBER TERM, 1936

No. 408 Original

THE STATE OF TEXAS,
Complainant,
against
THE STATE OF FLORIDA, ET AL.,
Respondents.

ANSWER OF THE RESPONDENT, THE STATE OF FLORIDA.

CARY D. LANDIS,
Attorney General of Florida,

H. E. CARTER,
Assistant Attorney General,

W. P. ALLEN,
Assistant Attorney General,

Solicitors for Respondent The State of Florida.

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 13 Original

THE STATE OF TEXAS,
Complainant,

against

THE STATE OF FLORIDA, ET AL.,
Respondents.

ANSWER OF THE RESPONDENT, THE STATE OF FLORIDA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Answering the bill of complaint herein, the Respondent, the State of Florida, says:

1. Answering Paragraph numbered 1 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except that it is without knowledge as to the citizenship and residence of the respondents Mabel Harlow Green and Hetty Sylvia Ann Howland Green Wilks.

2. Answering Paragraph numbered 2 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except that it denies that this suit involves a controversy between a State and citizens of another State.

3. Answering Paragraph numbered 3 of the bill of complaint, this respondent upon information and belief admits all and singular the allegations therein contained.

4. Answering Paragraph numbered 4 of the bill of complaint, this respondent admits that there was in effect throughout the month of June, 1936, and had been continuously for a long time prior thereto the Estate Tax Law of Florida, known as Chapter 16015, Laws of Florida, Acts of 1933, which imposes a tax upon the transfer of the estate of every person dying after the effective date of said Act, who at the time of death was a resident of the State of Florida, and of non-residents of the State owning real and tangible personal property located in the State of Florida, and that the United States of America since a date long prior to June, 1936, has by law also imposed an estate tax upon the estates of decedents, and upon information and belief respondent admits that the Commonwealth of Massachusetts and the State of New York each had, during the month of June, 1936, and long prior thereto, a law imposing a transfer, succession, or inheritance tax upon the right of succession or inheritance.

5. Answering Paragraph numbered 5 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except that as to the first sentence of said Paragraph, this respondent says that the State of Florida since a date prior to June, 1936, as a condition to succession, has by Chapter 16015, Laws of Florida, Acts of 1933, imposed a transfer, succession, or inheritance tax computed upon the net value of said estate and fixed at 80% of the estate taxes imposed by the United States of America under the Revenue Act of

1926, which said Chapter 16015, Laws of Florida, Acts of 1933, was in effect throughout the month of June, 1936.

6. Answering Paragraph numbered 6 of the bill of complaint, this respondent upon information and belief admits all and singular the allegations therein contained.

7. Answering Paragraph numbered 7 of the bill of complaint, this respondent upon information and belief admits all and singular the allegations therein contained.

8. Answering Paragraph numbered 8 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

9. Answering Paragraph numbered 9 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

10. Answering Paragraph numbered 10 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except that it denies that the decedent Edward H. R. Green at the time of his death was domiciled within the State of Texas or in the City of Terrell in the County of Kaufman in the State of Texas, and except that this respondent denies that the value of the real estate and tangible personal property seized and possessed by the decedent, Edward H. R. Green, in the State of Florida at the time of his death, was as alleged in Paragraph numbered 11 of the bill of complaint, and this respondent alleges that the value of said property is and was at the time of the death of said Edward H. R. Green greatly in excess of $73,000.00.

11. Answering Paragraph numbered 11 of the bill

of complaint, this respondent admits upon information and belief all and singular the allegations therein contained, except that it denies that the value of the real estate and tangible personal property located in the State of Florida, of which the said Edward H. R. Green was seized and possessed at the time of his death, was of the value of only $73,000.00, and respondent alleges that the value of said property is and was at the time of the death of Edward H. R. Green greatly in excess of $73,000.00.

12. Answering Paragraph numbered 12 of the bill of complaint, this respondent admits all and singular the allegations therein contained, assuming the value of the property of the estate of the said Edward H. R. Green to be substantially as alleged in the bill of complaint.

13. Answering Paragraph numbered 13 of the bill of complaint, this respondent admits upon information and belief that under the succession, transfer, or inheritance tax laws of the State of Texas, the State of Texas is entitled to levy and collect a tax, but denies that the amount of such tax is approximately $5,326,000.00, and denies that the State of Texas under its succession, transfer, or inheritance tax laws is entitled to levy upon or collect from the estate of the decedent, Edward H. R. Green, any tax except such tax measured by the value of the real property owned by said Edward H. R. Green in the State of Texas at the time of his death.

14. Answering Paragraph numbered 14 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

15. Answering Paragraph numbered 15 of the bill of complaint, this respondent admits upon information and belief that under the transfer, succession, or in-

heritance tax laws of the Commonwealth of Massachusetts, the Commonwealth of Massachusetts will levy and collect a tax, but denies that the amount of such tax will be approximately $5,809,000.00, and denies that the Commonwealth of Massachusetts under its succession, transfer, or inheritance tax laws is entitled to levy and collect any tax from the estate of the said decedent, Edward H. R. Green, measured by the value of the intangible personal property of said estate.

16. Answering Paragraph numbered 16 of the bill of complaint, this respondent admits upon information and belief that under the succession, transfer, or inheritance tax laws of the State of New York, the State of New York will levy and collect a tax, but denies that the amount of such tax will be approximately $7,132,000.00, and denies that the State of New York under its succession, transfer, or inheritance tax laws is entitled to levy and collect any tax from the estate of the decedent, Edward H. R. Green, measured by the value of the intangible personal property of said estate.

17. Answering Paragraph numbered 17 of the bill of complaint, this respondent admits upon information and belief all and singular the allegations therein contained, except that it denies that the State of Texas is entitled to taxes from the estate of Edward H. R. Green, deceased, in the amount of approximately $5,326,000.00.

18. Answering Paragraph numbered 18 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

19. Answering Paragraph numbered 19 of the bill of complaint, this respondent is without knowledge as to whether Hetty Sylvia Ann Howland Green Wilks claims to be or is a sister of the said Edward H. R. Green,

and as to whether she asserts the right and privilege of succession to the whole of the tangible and intangible personal property owned by the said Green at death, and except that this respondent is without knowledge as to whether Mabel Harlow Green claims to be or is the widow of the said Edward H. R. Green, and as to whether she asserts the right and privilege of succession to the whole of the tangible and intangible property owned by the said Green at death.

20. Answering Paragraph numbered 20 of the bill of complaint, this respondent is without knowledge as to all and singular the allegations therein contained.

21. Answering Paragraph numbered 21 of the bill of complaint, this respondent is without knowledge as to whether the said Edward H. R. Green was born abroad a citizen of the United States of America, or whether his parents were at that time domiciled and residing in Bellows Falls, Vermont. Respondent is also without knowledge as to whether the said Edward H. R. Green in the year 1892 at the age of twenty-four entered into the State of Texas in the City of Terrell in the County of Kaufman and began to reside and to make his home in the said State of Texas. Respondent denies that the said Edward H. R. Green continued his residence and domicile within the State of Texas continuously at all times after 1892, until his death in 1936, and denies that throughout the whole of this period on innumerable occasions, the said Edward H. R. Green through civic activities and by frequent declarations manifested a clear intention and an unquestioned determination to maintain and preserve at all times his domicile and residence within the State of Texas. Respondent is without knowledge as to whether beginning in 1910 the unfortunate circumstances of the failing

health of the mother of Edward H. R. Green, together with the necessity for rendering assistance in the extensive financial activities of his said mother, required the absence of the decedent Green from Texas for longer and more frequent periods than had been his habit, custom, and wont, and is without knowledge as to whether the death of his mother, Hetty Green, in 1916, and the manifold duties coincident with the administration of her estate, and the great trusts and responsibilities imposed upon him by his mother and sister, the respondent Wilks enlarged the activities of Edward H. R. Green, and required of him the devotion and expenditure of a large portion of his time in the State of New York and in the Commonwealth of Massachusetts. Respondent admits that after the year 1916, the decedent Edward H. R. Green spent much of his time in the State of Florida, but denies that he did so because of his failing health, and denies that he did not during said time by declaration or act manifest any intention or purpose of abandoning any former residence and domicile elsewhere, and establishing the same in the State of Florida, and denies that he intended to retain continuously the State of Texas as his domicile, and denies that he regularly and repeatedly within each and every year until his death declared and manifested his intention to retain the State of Texas as his domicile, and denies that he meticulously avoided conduct or actions which under any statute or administrative rule of the State of Florida or any other State, might constitute him prima facie a resident or inhabitant or citizen of the State of Florida, or his domicile that of the State of Florida.

22. Answering Paragraph numbered 22 of the bill of complaint, this respondent denies that in law and in

fact the said Edward H. R. Green was domiciled at his death in the State of Texas, and denies that in law and in fact he was not domiciled at such time in the State of Florida, but admits that in law and in fact the said Edward H. R. Green at the time of his death was not domiciled in the Commonwealth of Massachusetts, or the State of New York.

23. Answering Paragraph numbered 23 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except that respondent is without knowledge as to whether the respondent Mabel Harlow Green and the respondent Hetty Sylvia Ann Howland Green Wilks or either of them is entitled to succeed to the estate of the decedent Edward H. R. Green.

24. Answering Paragraph numbered 24 of the bill of complaint, this respondent is without knowledge as to all and singular the allegations therein contained.

25 Answering Paragraph numbered 25 of the bill of complaint, this respondent admits upon information and belief all and singular the allegations therein contained, except that this respondent is without knowledge as to the amount of the transfer, succession, or inheritance tax now lawfully due and owing to the State of Texas, and for which it has a just and lawful lien on the property of the estate of said Edward H. R. Green.

26. Answering Paragraph numbered 26 of the bill of complaint, this respondent admits upon information and belief all and singular the allegations therein contained.

27. Answering Paragraph numbered 27 of the bill of complaint, this respondent admits unqualifiedly in re-

spect to Florida and upon information and belief in respect to the States of Texas and New York and the Commonwealth of Massachusetts, all and singular the allegations therein contained, except that respondent is without knowledge as to whether the State of Texas will appear in any of the proceedings now instituted and enumerated in Paragraph numbered 26 of the bill of complaint.

28. Answering Paragraph numbered 28 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

29. Answering Paragraph numbered 29 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

30. Answering Paragraph numbered 30 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

31. Answering Paragraph numbered 31 of the bill of complaint, this respondent admits as to the State of Florida and admits upon information and belief in respect to the Commonwealth of Massachusetts and the State of New York, all and singular the allegations therein contained.

32. Answering Paragraph numbered 32 of the bill of complaint, this respondent is without knowledge as to whether by reason of the facts averred in Paragraphs 11-17 and 24-28 in the bill of complaint, the rights of the State of Texas and its rightful and lawful lien for transfer, succession, or inheritance taxes as therein averred, are now in actual jeopardy, and as to whether the complainant is suffering and sustaining and will further suffer and sustain actual injury and irreparable damage

to its rights and to its lawful and rightful lien for transfer, succession, or inheritance taxes, unless the relief prayed for in the bill of complaint is granted.

33. Answering Paragraph numbered 33 of the bill of complaint, this respondent admits all and singular the allegations therein contained, except as to the amount of the transfer, succession, or inheritance tax upon the estate of the said decedent Green, to which the State of Texas is entitled and for which it has a lien on the property of said estate, and denies that the amount thereof is approximately $5,326,000.00, and denies that the amount of said tax is anywhere near $5,326,000.00.

34. Answering Paragraph numbered 34 of the bill of complaint, this respondent admits upon information and belief all and singular the allegations therein contained.

35. Answering Paragraph numbered 35 of the bill of complaint, this respondent admits all and singular the allegations therein contained.

36. Further answering the bill of complaint herein, this respondent denies that at the time of the death of the said Edward H. R. Green on or about June 8, 1936, or at any time during the month of June, 1936, the said Edward H. R. Green was domiciled in the State of Texas or in the commonwealth of Massachusetts, or in the State of New York, or in any State other than the State of Florida.

COUNTERCLAIM

And for a counterclaim the respondent, the State of Florida, re-avers all the matters alleged in the foregoing answer, and here alleges that the said decedent,

H. R. Green, was at the time of his death and continuously for a long time prior thereto dom-hin the State of Florida, in the City of Miami Dade County in said State. That the said Ed-R. Green was at the time of his death the owner essed of property of very great value, consist-al estate and both tangible and intangible per-perty, the exact character, description, value ion of the said tangible and intangible personal being to this respondent unknown, and as to s respondent has no means of knowing and will until such time as an inventory and appraisal n due course.

tate of Florida since a date prior to June, 1936, apter 16015, Laws of Florida, Acts of 1933, l imposed an estate or inheritance tax upon the by inheritance, descent, devise, succession, or f the estate of every person dying after the ef-te of said Act, who at the time of death was a of the State of Florida or who at the time of s the owner of real or tangible personal prop-ally located within the State of Florida, the f said tax being computed upon the net value tate and fixed at 80% of the estate taxes im-the United States of America under the Rev-of 1926, which said Chapter 16015, Laws of Acts of 1933, became effective on October 1, 3, and continued to be and was in full force and n thence throughout the month of June, A. D. was in effect at the time of the death of the ard H. R. Green. That under authority of said 6015, Laws of Florida, Acts of 1933, this re-the State of Florida is entitled to levy and col-ate or inheritance tax upon the transfer by in-

heritance, descent, devise, succession, or bequest of the estate of said Edward H. R. Green, computed upon the net value of all the real property and tangible personal property of said estate situate in the State of Florida, and upon all the intangible personal property of said estate wherever situate, and fixed at 80% of the estate taxes imposed by the United States of America under the Revenue Act of 1926, the amount of which said tax this respondent upon information and belief alleges will be approximately $6,000,000.00.

For the information of the Court, Chapter 16015, Laws of Florida, Acts of 1933, is set out in full in Appendix A hereto, and this respondent prays this Court to consider the applicable provisions of said statute and the existence and effect thereof as an allegation of this counterclaim as if here set forth in full.

WHEREFORE, this Respondent prays by way of counterclaim that this Court may determine, declare, adjudge, and decree whether for the purpose of taxation as herein claimed, the said Edward H. R. Green was domiciled at death in the State of Florida, or in the State of Texas, or in the Commonwealth of Massachusetts, or in the State of New York, and more particularly may determine, declare, adjudge, and decree that the said Edward H. R. Green for purposes of taxation as aforesaid was domiciled at death within the State of Florida, and not within the State of Texas, or within the Commonwealth of Massachusetts, or within the State of New York, and further may determine, declare, adjudge and decree that this Respondent, the State of Florida, has the exclusive legal right and jurisdiction to impose and collect an estate or inheritance tax upon the

transfer by inheritance, descent, devise, succession, or bequest, of the intangible personal property owned by the said Edward H. R. Green at the time of his death.

THE STATE OF FLORIDA,
Respondent.

By .....
CARY D. LANDIS,
Attorney General.

CARY D. LANDIS,
Attorney General of Florida,
J. E. CARTER,
Assistant Attorney General,
W. P. ALLEN,
Assistant Attorney General,

Solicitors for Respondent
The State of Florida.

APPENDIX A

CHAPTER 16015—(No. 158).

SENATE BILL NO. 537

N ACT Relating to the Assessment, Levying and Collection of Taxes Upon the Estates of Decedents, to Prescribe the Rates of Such Taxes, and the Method of Computing and Collecting the Same, to Provide for the Enforcement Thereof and for the Disposition of Revenue Therefrom, and Imposing Penalties for the Violation of this Act.

e It Enacted by the Legislature of the State of Florida:

Section 1. This Act may be cited as the Estate Tax Law of lorida.

Section 2. When used in this Act:

(a) The term "Commissioner" means the Comptroller of the tate of Florida, as Commissioner of Revnue.

(b) The term "executor" means the executor, administrator curator of the decedent, or, if there is no executor, admintrator or curator appointed, qualified and acting, then any perin who is in the actual or constructive possession of any propty included in the gross estate of the decedent;

(c) The word "person" means persons, corporations, associaons, joint stock companies and business trusts;

(d) The word "transfer" shall be taken to include the passing property or any interest therein, in possession or enjoyment, resent or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the anner herein described;

(e) The word "decedent" shall include the testator, intestate, antor, bargainor, vendor, or donor;

(f) The word "resident" means a natural person domiciled in e State of Florida;

(g) The word "non-resident" means a natural person domiled without the State of Florida;

(h) The term "gross estate" means the gross estate as determined under the provisions of the applicable federal revenue act;

(i) The term "net estate" means the net estate as determined under the provisions of the applicable federal revenue act;

(j) The term "tangible personal property" means corporeal personal property, including money; and the term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt and choses in action generally.

(k) The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

Section 3. A tax is hereby imposed upon the transfer of the estate of every person dying after the effective date of this Act, who at the time of death was a resident of this State, the amount of which shall be a sum equal to the amount by which the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states shall exceed the aggregate amount of all constitutionally valid estate, inheritance, legacy and succession taxes actually paid to the several states of the United States (other than the State of Florida) in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate.

Section 4. A tax is hereby imposed upon the transfer of real property situate and tangible personal property having an actual situs in this State of every person who at the time of death was not a resident of this State but was a resident of the United States, the amount of which shall be a sum equal to such proportion of the amount of the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in this State bears to the value of the entire gross estate wherever situate.

Section 5. A tax is hereby imposed upon the transfer of real property situate and tangible personal property having an actual situs in this State and upon intangible personal property physically present within this State of every person who at the time of death was not a resident of the United States, the amount of which shall be a sum equal to such proportion of the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in this State bears to the value of the estate taxable by the United States wherever situate. For the purpose of this Section, stock in a corporation organized under the laws of this State shall be deemed physically present within this State. The amount receivable as insurance upon the life of a decedent who at the time of his death was not a resident of the United States, and any moneys deposited with any person carrying on the banking business by or for such a decedent who was not engaged in business in the United States at the time of his death, shall not for the purpose of this Section, be deemed to be physically present in this State.

Section 6. (a) The Comptroller of the State of Florida shall be the Commissioner of Revenue of the State of Florida and as such Commissioner shall, except as otherwise provided in this Act, have jurisdiction and be charged with the administration and enforcement of the provisions of this Act.

(b) The Commissioner, for the purpose of ascertaining the correctness of any return, or for the purpose of making a return where none has been made, is hereby authorized to examine any books, papers, records or memoranda, bearing upon the matter required to be included in the return, and may require the attendance of persons rendering return or of any officer or employee of such persons, or of any person having knowledge in the premises, at any convenient place in the County in which such person resides, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

(c) If any person summoned to appear under this Act to testify, or to produce books, papers, or other data, shall refuse to do so, the Circuit Court for the county in which such person

resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(d) The Commissioner may appoint and remove such Deputy Commissioners, Examiners, Appraisers, Attorneys and Employees as he may deem necessary, such persons to have such duties and powers as the Commissioner may from time to time prescribe, the salaries of all Deputy Commissioners, Examiners, Appraisers, Attorneys and Employees employed by the Commissioner shall be such as he may prescribe, and the Commissioner and such Deputy Commissioners, Examiners, Appraisers, Attorneys and Employees shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in performance of their duties.

(e) The Commissioner may require such of the Deputy Commissioners, Examiners, Appraisers, Attorneys and Employees as he may designate to give bond payable to the State of Florida for the faithful performances of their duties in such form and with such sureties as he may determine, and all premiums on such bonds shall be paid by the State.

(f) All officers, empowered by law to administer oaths and the Commissioner, and the Deputy Commissioners, Examiners, Appraisers and Attorneys appointed by him are hereby authorized and empowered to administer an oath to all persons giving any testimony before them or to take the acknowledgment of any person in respect to any return or report required under this Act.

(g) All Deputy Commissioners, Examiners, Appraisers and Attorneys appointed by the Commissioner shall have for identification purpose, proper credentials signed by the Commissioner and exhibit the same upon demand.

(h) The Commissioner may from time to time make such rules and regulations not inconsistent with this Act as he may deem necessary to enforce its provisions, and may adopt such rules and regulations as are or may be promulgated with respect to the estate tax provisions of the Revenue Act of the United States in so far as they shall be applicable hereto. The Commissioner may from time to time prescribe such forms as he shall deem proper for the administration of this Act.

(i) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Commissioner, or any Deputy Commissioner, Examiner, Appraiser, Attorney or other Employee, to divulge or make known in any manner the value of any estate or any particulars set forth or disclosed in any report or return required. Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof; provided, however, that the Commissioner may permit the Commissioner of Internal Revenue, or any Collector of Internal Revenue, or Internal Revenue Agent of the United States or the proper officer of any state imposing an estate tax or inheritance tax, or the authorized representative of such officer, to inspect the estate tax returns of any individual, or may furnish to such officer or his authorized representatives an abstract of the return of any executor or furnish information concerning any item contained in any return or disclosed by the report of any investigation of the return of any executor.

(j) Said Commissioner may sue and be sued in his name as such Commissioner, but shall not be required to give supersedeas or other bond in any cause or court of this State.

(k) Said Commissioner is authorized to employ special counsel to advise him and to conduct any litigation or proceeding that may be brought by or against him, and such special counsel shall be paid such compensation as said Commissioner shall deem proper.

(l) Said Commissioner is authorized to employ special appraisers for the purpose of determining the value of any property which is or is believed by the Commissioner to be subject to the tax imposed by this Act, and such special appraisers shall be paid such compensation as said Commissioner shall deem proper.

Section 7. (a) The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the Commissioner. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the Commissioner a return under oath, setting forth (1) a description and the value of the gross estate of the decedent at the time

of his death, as defined in the applicable federal revenue Act; or, in case of the estate of a decedent who at the time of death was not domiciled in the United States, of that part of his gross estate situated in the United States; (2) the deductions allowable under the applicable federal revenue Act; (3) the value of the net estate of the decedent as defined in the applicable federal revenue Act; (4) a description and the value of such part of the real property and tangible personal property of the gross estate of a decedent who at the time of his death was a resident of the State of Florida as shall be located or situate, at the time of his death, without the State of Florida; (5) a description and the value of such part of the real property and tangible personal property of the gross estate of a decedent who at the time of his death was a non-resident of the State of Florida but a resident of the United States as shall be located or situate, at the time of his death, within the State of Florida; (6) a description and the value of real property situate and personal property having an actual situs in this State and intangible personal property physically present within this State of the estate of a decedent who at the time of his death was not a resident of the United States; and (7) the tax paid or payable thereon and the manner of computing the same; or such part of such information as may at the time be ascertainable; and such supplemental data as may be necessary to determine and establish the correct tax.

(b) Return shall be made in all cases where the gross estate at the death of the decedent exceeds $50,000, and in the case of the estate of every decedent who at the time of his death was not domiciled in the United States whose gross estate shall include any real property situate and tangible personal property having an actual situs in the State of Florida and intangible personal property physically present within the State of Florida. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the Commissioner such person shall in like manner make a return as to such part of the gross estate.

(c) If the failure to file a return is due to sickness or absence, the Commissioner may allow such further time, not ex-

ceeding 30 days, for making and filing the return as he deems proper.

(d) If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, wilfully or otherwise, a false or fraudulent return or list, the Commissioner shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return or list so made by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

Section 8. (a) The tax imposed by this Act shall be due and payable one year after the decedent's death, and shall be paid by the executor to the Commissioner.

(b) Where the Commissioner finds that the payment on the due date of the tax or any part thereof would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part, but no extension shall be for more than one year and the aggregate of extensions with respect to any estate shall not exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension unless a further extension is granted.

(c) If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the due date of the tax to the date the same shall be paid.

Section 9. As soon as practicable after the return is filed the Commissioner shall examine it, if it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the return so recomputed, the excess so paid shall be credited or refunded to the taxpayer in accordance with the provisions of this Act. If the amount already paid is less than the amount which should have been paid, the difference, together with interest thereon at the rate of one-half of one per centum per month from the time the tax was due shall be paid upon notice and demand by the Commissioner. If any part of the deficiency is due

to negligence or intentional disregard of the provisions
Act or of rules and regulations issued pursuant hereto
knowledge thereof but without intent to defraud, there sh
added as a penalty, ten per centum of the total amount
deficiency in the tax, and if any part of the deficiency is wi
made with intent to defraud, there shall be added as a pe
fifty per centum of the total amount of such deficiency
interest in either such a case shall be collected at the rate
per centum per month on the amount of such deficiency
tax and penalty from the time it was due, which interes
penalty shall become due and payable upon notice and de
by the Commissioner and such executor shall be liable t
State personally and on his official bond, if any, for any l
the State accruing under the above provisions through his
gence or wilful neglect. The Commissioner shall have pow
compromise or remit any penalty imposed pursuant to this
tion. If upon examination of a return made, a tax or a defici
in tax is disclosed, the executor shall be notified thereof by
Commissioner and given a period of not less than th'rty
more than sixty days after such notice is sent by regist
mail, in which to show cause why the tax or deficiency sh
not be paid. The Commissioner shall proceed to hear and
termine all questions involving such tax or deficiency upon
less than ten days' notice to the executor of the date of
hearing, and a final decision thereon shall be made as qui
as practicable, and any tax or deficiency in tax found due a
such hearing, shall be assessed and paid, together with the
nalty and interest, if any applicable thereto, within sixty d
after notice and demand by the Commissioner. In all heari
before the Commissioner, oral, documentary or other evide
may be introduced.

Section 10. The findings and determination of any tax
deficiency made pursuant to any hearing as provided in Sect
9 of this Act, shall be in writing and a copy thereof, toget
with demand for payment of such tax or deficiency, shall be s
by registered mail to the executor. The findings of the C
missioner and the determination by the Commissioner of
questions involving any tax or deficiency shall be final unl
the executor, or other party interested, shall within fifty da
from the date of the receipt of a copy of such findings and det

mination, bring a suit in chancery against the Commissioner and such other parties as are interested. It shall not be necessary to join as parties to such suit any heir-at-law, next of kin, distributee, legatee or devisee of said decedent. The bill of complaint shall contain a concise statement of the facts and shall have annexed thereto a copy of the return and of the findings and determination of the Commissioner and shall pray for an abatement of the tax, in such amount and to such extent, in part or in whole, and for such other relief as the executor shall desire. Such suits shall proceed as other suits in chancery. Either the Commissioner, the executor or any other party may appeal to the Supreme Court of Florida as in other cases.

Section 11. Where the amount of tax shown upon the return made in good faith has been fully paid, or time for payment has been extended, as provided in this Act beyond one year after the decedent's death, and an additional amount of tax is, after expiration of such period of one year found to be due, then such additional amount shall be paid upon notice and demand by the Commissioner, and if it remains unpaid for thirty days after such notice and demand, there shall be added as part of the tax, interest on such additional amount at the rate of twelve per centum per annum from the expiration of such period until paid, and such additional tax and interest shall, until paid, be and remain a lien upon the entire gross estate.

Section 12. The Commissioner shall issue to the executor upon payment of the tax imposed by this Act, receipts in triplicate, any of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. If the executor files a complete return and makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner as soon as possible, and in any event within one year after receipt of such application, shall notify the executor of the amount of the tax, and upon payment thereof the executor shall be discharged from personal liability for any additional tax thereafter found to be due, and shall be entitled to receive from the Commissioner a receipt in writing showing such discharge; provided, however, that such discharge

shall not operate to release the gross estate of the lien of any additional tax that may thereafter be found to be due, while the title to such gross estate remains in the executor or in the heirs, devisees, or distributees thereof; but after such discharge is given no part of such gross estate shall be subject to such lien or to any claim or demand for any such tax after the title thereto has passed to a bona fide purchaser for value.

Section 13. If any tax imposed by this Chapter or any portion of such tax be unpaid within ninety days after the same becomes due, and the time for payment be not extended, the Commissioner shall issue a warrant directed to the Sheriff of any county of the State in which the estate or any part thereof may be situated, commanding him to levy upon and sell the real and personal property of such estate found within his county, for the payment of the amount thereof, with such interest and penalties, if any, as may have accrued thereon or been assessed against the same, together with the cost of executing the warrant, and to return such warrant to the Commissioner and pay to him the money collected by virtue thereof, by a time to be therein specified, not less than sixty days from the date of the warrant. The sheriff thereupon shall proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for services in executing the warrant as are now allowed by law for like services to be collected in the same manner as now provided by law. Alias and pluries warrants may issue from time to time as said Commissioner may deem proper until the entire amount of the tax, deficiency, interest, penalties and costs have been recovered.

Section 14. If the tax or any part thereof is paid or collected out of that part of the estate passing to or in possession of any person other than the executor in his capacity as such, such person shall be entitled to a reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts, or other

harges against the estate, it being the purpose and intent of this ection that so far as is practical and unless otherwise directed y the will of the decedent, the tax shall be paid out of the estate efore its distribution; but the Commissioner shall not be harged with enforcing contribution from any person or persons.

Section 15. Unless the tax is sooner paid in full, it shall be a ien for ten years upon the gross estate of the decedent, except hat such part of the gross estate as is used for the payment of harges against the estate and expenses of its administration, al- owed by any court having jurisdiction thereof, shall be divested f such lien. If the Commissioner is satisfied that no tax liabil- ty exists or that the tax liability of an estate has been fully dis- harged or provided for, he may issue a waiver releasing any or ll property of such estate from the lien herein imposed. There hall be paid to the Commissioner a fee of one dollar for each waiver so issued.

Section 16. If any executor shall make distribution either in whole or in part of any of the property of an estate to the heirs, ext of kin, distributees, legatees or devisees without having aid or secured the tax due the State of Florida under this Act, r obtained the release of such property from the lien of such tax e shall become personally liable for the tax so due the State, r so much thereof as may remain due and unpaid, to the full xtent of the full value of any property belonging to such person r estate which may come into his hands, custody or control.

Section 17. Every executor shall have the same right and ower to take possession of or sell, convey and dispose of real state as assets of the estate for the payment of the tax imposed y this Act as he may have for the payment of the debts of the ecedent.

Section 18. Actions may be brought within the time or times erein specified by the Commissioner to recover the amount of ny taxes, penalties and interest due under this Act. Every such ction shall be brought in the county where the estate is being or as been administered, or if no administration be had in this State, then in any county where any of the property of the estate hall be situate.

Section 19. No final account of an executor of the estate of nonresident, nor of the estate of a resident where the value of

the entire estate wherever situate exceeds $50,000, shall be allowed by any court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this Act upon said executor which have become payable, have been paid. The certificate of the Commissioner of non-liability for taxes or his receipt for the amount of the tax therein certified shall be conclusive in such proceedings as to the liability or the payment of the tax to the extent of said certificate.

Section 20. For the purpose of facilitating the settlement and distribution of estates held by executors, the Commissioner may, on behalf of the State, agree upon the amount of taxes at any time due or to become due from such executor under the provisions of this statute, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

Section 21. Except as otherwise provided in this Act, the amount of estate taxes due under any return made under this Act shall be determined and assessed within three years from the date the return was filed, and no suit or other proceedings for the collection of any taxes due, shall be begun after the expiration of three years from date such return was filed; provided, however, that in the case of a false or fraudulent return or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment at any time.

Section 22. If upon examination of any return made under this Act, or upon proofs submitted by the executor, it appears that an amount of estate tax has been paid in excess of that properly due, then the amount in excess shall, upon written claim therefor being filed by the executor with the Commissioner, be refunded to the executor and paid upon the warrant of the Commissioner drawn upon the State Treasurer who shall honor and pay the same. No executor shall be entitled to file claim or bring any action for any refund after the expiration of three years from the time such payment was made unless it shall be made to appear that the right to such refund could not have been established within such period of three years.

Section 23. The County Judges of this State shall, on or before the tenth day of every month, notify the Commissioner of the names of all decedents, the name and address of the respective executors, administrators or curators appointed, the amount of the bonds, if any, required by the court, and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before him or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding month, and such report shall contain any other information which the County Judge may have concerning the estate of such decedents; and said County Judges shall also furnish forthwith such further information, from the records and files of his office in regard to such estates, as the Commissioner may from time to time require. The expenses of making such reports shall be charged as cost of administration against the estate of such decedents.

Section 24. If the executor of the estate of a nonresident be a corporation duly authorized, qualified and acting as such executor in the jurisdiction of the domicile of such decedent, it shall be under the duties and obligations as to the giving of notices and filing of returns required by this Act, and may bring and defend actions and suits as may be authorized or permitted by this Act, to the same extent as an individual executor, notwithstanding that such corporation may be prohibited from exercising, in this State, any powers of executor, but nothing herein contained shall be taken or construed as authorizing corporations not authorized to do business in this State to qualify or act as executor, administrator or in any other fiduciary capacity, if otherwise prohibited by the laws of this State, except to the extent herein expressly provided.

Section 25. The estate of each decedent whose property shall be subject to the laws of the State of Florida, shall be deemed prima facie liable for estate taxes under this Act, and shall be subject to a lien therefor in such amount as may be later determined to be due and payable on such estate as provided in this Act. Such presumption of liability shall begin on the date of the death of the decedent and shall continue until the full settlement of all taxes which may be found to be due under this Act,

such settlement to be shown by receipts for all taxes due to be issued by the Commissioner as provided for in this Act. Whenever it shall be made to appear to the Commissioner that an estate is not subject to any tax under this Act, it shall be the duty of such Commissioner to issue to the executor, administrator, curator or other personal representative, or to the heirs, devisees, or legatees of the decedent, a certificate in writing to that effect, showing such non-liability to tax, which certificate of non-liability shall have the same force and effect as a receipt showing payment. Such certificate of non-liability shall be subject to record and admissible in evidence in like manner as receipts showing payment of taxes. There shall be paid to the Commissioner a fee of one dollar for each certificate so issued.

Section 26. Where no receipt for the payment of taxes, or no certificate of non-liability for taxes, has been issued or recorded as provided for in this Act, the property constituting the estate of the decedent in this State shall be deemed fully acquitted and discharged of all liability for estate or inheritance taxes under this Act after a lapse of five years from the date of the death of the decedent unless the Commissioner shall make out and file and have recorded in the public records of the county wherein any part of the estate of the decedent may be situated in this State, a notice of lien against the property of the estate, specifying the amount or approximate amount of taxes claimed to be due to the State of Florida under this Act, which notice of lien shall continue said lien in force for an additional period of five years or until payment is made. Such notice of lien shall be filed and recorded in the Book of Deeds in the office of the Clerk of the Circuit Court.

Section 27. (a) Whoever knowingly makes any false statement in any notice or return required to be filed under this Act shall be liable to a penalty of not exceeding $5,000, or imprisonment not exceeding one year, or both.

(b) Whoever fails to comply with any duty imposed upon him by Section 7 of this Act, or having in his possession or control any record, filed, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon re-

quest to the Commissioner or any Deputy Commissioner, Examiner, Appraiser, or Attorney appointed pursuant to this Act, who desires to examine the same in the performance of his duties under this Act, shall be liable to a penalty of not exceeding $500.00, to be recovered with costs of suit, in a civil action in the name of the State of Florida.

(c) Any person required under this Act to pay any tax, or required by law or regulation made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(d) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(e) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under this Act, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Section 28. All taxes and fees levied and collected under this Act shall be paid into the Treasury of the State of Florida, and when so paid into the Treasury shall be applicable to the expense

of the State Government and to such other purpose as the Legislature shall by law direct,including the payment of all costs and expenses incurred by the Commissioner in the administration or enforcement of this Act. All amounts necessary to meet and pay such costs and expenses from time to time are hereby appropriated and made available for that purpose, and such costs and expenses, and any amounts which may be necessary to make refunds of taxes as provided for in this Act shall be paid out on vouchers drawn and approved by the Commissioner upon the State Treasurer of the State of Florida, who is required to pay the same.

Section 29. This Act shall remain in force and effect so long as the Government of the United States retains in full force and effect as a part of the revenue laws of the United States a federal estate tax and this Act shall cease to be operative as and when the Government of the United States ceases to impose any estate tax of the United States.

Section 30. If any section, sub-section, paragraph, or provision of this Act shall be declared to be unconstitutional, or shall be found to be invalid or unenforcible, such findings shall not affect any of the remaining portions of this Act as would be valid or constitutional and enforcible, if such invalid portion had been omitted. The Legislature hereby declares that it is its intention to enact this Act, and each and every portion and provision thereof that can be made legally applicable and enforcible under the constitution of the State of Florida.

Section 31. All laws or parts of laws in conflict with this Act are hereby repealed.

Section 32. When not otherwise provided for in this Act, the rules of interpretation and construction applicable to the estate and inheritance tax laws of the United States shall apply to and be followed in the interpretation of this Act.

Section 33. This Act shall take effect at 12:01 o'clock A. M. Eastern Standard Time, October 1, A. D. 1933, and shall apply to the estates of decedents dying thereafter; and the estates of decedents dying prior thereto shall be taxed in accordance with the statutes and laws of Florida in force prior to the effective date of this Act.

Approved June 7, 1933.